

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Southwestern Bell Telephone Company	)	IC No. 05-S89150
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

**ORDER ON RECONSIDERATION**

**Adopted: November 28, 2007**

**Released: November 29, 2007**

By the Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we deny a Petition for Reconsideration filed by Southwestern Bell Telephone Company (SBC) asking us to reverse a finding that SBC changed Complainant's telecommunications service provider in violation of the Commission's rules by failing to obtain proper authorization and verification.<sup>1</sup> On reconsideration, we affirm that SBC's actions violated the Commission's carrier change rules.<sup>2</sup>

**I. BACKGROUND**

2. In December 1998, the Commission adopted rules prohibiting the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.<sup>3</sup> The rules were designed to take the profit out of slamming.<sup>4</sup> The Commission applied the rules to all wireline carriers,<sup>5</sup> and modified its existing requirements for the authorization and verification of preferred carrier changes.<sup>6</sup>

3. The rules require that a submitting carrier receive individual subscriber consent before a

<sup>1</sup> See Petition for Reconsideration of Southwestern Bell telephone Company (filed June 22, 2005) (*Petition*), seeking reconsideration of *Southwestern Bell Telephone Company*, 20 FCC Rcd 9696 (2005) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CGB). We note that, subsequent to the filing of the *Petition*, there was a merger between SBC and AT&T, Inc. The name of the merged company is AT&T, Inc. For purposes of resolving this *Petition*, however, we will use the name "SBC."

<sup>2</sup> See 47 C.F.R. §§ 64.1100 – 64.1190.

<sup>3</sup> See *id.*; see also 47 U.S.C. § 258(a).

<sup>4</sup> See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1512, para. 4 (1998) (*Section 258 Order*). See also *id.* at 1518-19, para. 13.

<sup>5</sup> See *id.* at 1560, para. 85. CMRS providers were exempted from the verification requirements. See *id.*

<sup>6</sup> See *id.* at 1549, para. 66.

carrier change may occur.<sup>7</sup> Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.<sup>8</sup>

4. The Commission also adopted liability rules for carriers that engage in slamming.<sup>9</sup> If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.<sup>10</sup> Where the subscriber has paid charges to the unauthorized carrier, the unauthorized carrier must pay 150% of those charges to the authorized carrier, and the authorized carrier must refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.<sup>11</sup>

5. The Commission received a complaint on March 2, 2005, alleging that Complainant's telecommunications service provider had been changed from Globcom, Inc. to SBC without Complainant's authorization.<sup>12</sup> Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,<sup>13</sup> the Division notified SBC of the complaint.<sup>14</sup> In its response, SBC stated that authorization was received and confirmed through third party verification (TPV).<sup>15</sup> The Division reviewed the TPV and found that SBC's verifier failed to confirm the identity of the subscriber as required by the Commission's rules<sup>16</sup> and, therefore, that SBC's actions resulted in an unauthorized change in Complainant's telecommunications service provider.<sup>17</sup> SBC seeks reconsideration of the *Division Order*.

## II. DISCUSSION

6. Based on the record before us, we affirm the *Division Order* and deny SBC's *Petition*. As discussed below, SBC violated the Commission's carrier change rules because its verifier failed to

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<sup>7</sup> See 47 C.F.R. § 64.1120; see also 47 U.S.C. § 258(a) (barring carriers from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures).

<sup>8</sup> See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

<sup>9</sup> See 47 C.F.R. §§ 64.1140, 64.1160-70.

<sup>10</sup> See 47 C.F.R. §§ 64.1140, 64.1160 (any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change).

<sup>11</sup> See 47 C.F.R. §§ 64.1140, 64.1170.

<sup>12</sup> Informal Complaint No. IC 05-S89150, filed March 2, 2005.

<sup>13</sup> 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

<sup>14</sup> See Notice of Informal Complaint No. IC 05-S89150 to SBC from the Deputy Chief, Division, CGB, dated March 18, 2005.

<sup>15</sup> SBC's Response to Informal Complaint No. IC 05-S8150, received April 13, 2005.

<sup>16</sup> See 47 C.F.R. § 64.1120(c)(3)(iii).

<sup>17</sup> See *Division Order*, 20 FCC Rcd 9696 (2005); see also 47 C.F.R. § 64.1150(d).

confirm the identity of the subscriber.

7. In the *Petition*, SBC contends that the *Division Order* was incorrect because the TPV recording clearly confirms Complainant's identity in accordance with Section 64.1120(c)(3)(iii) of the Commission's rules.<sup>18</sup> First, SBC states that the Complainant's identity was confirmed when the third-party verifier came on the line and addressed the subscriber as Mrs. [name omitted], and the subscriber said "[h]ello."<sup>19</sup> We disagree that this response was sufficient to confirm the calling party's identity. The woman responded by only saying, "hello." The verifier did not ask if the name mentioned by the verifier was her last name; simply saying "hello" does not confirm one's identity.

8. Second, SBC asserts that confirmation was also obtained when, later in the verification, the third-party verifier asked the subscriber to pronounce her first name, and the subscriber stated her first name<sup>20</sup> and responded affirmatively that she was the decision maker regarding the account. While the verifier asked the woman on the call how to pronounce her first name and the woman pronounced it, verifying a first name is not sufficient to elicit the identity of the subscriber. In addition, while the verifier did confirm that the person on the call was authorized to make the carrier change, such confirmation is a separate requirement<sup>21</sup> and confirms that the person on the call is a *subscriber* as defined by Section 64.1110(h) of the Commission's rules.<sup>22</sup> Such confirmation, however, does not elicit the *identity* of the subscriber.<sup>23</sup>

9. Finally, SBC argues that confirmation of the subscriber's identity was obtained when the third-party verifier asked the subscriber to provide the month and day of her birth, which she provided.<sup>24</sup> Providing one's month and day of birth satisfies the requirement that the verifier obtain personally identifiable information pursuant to Section 64.1120(c)(3), but not the requirement to elicit the identity of the subscriber pursuant to Section 64.1120(c)(3)(iii). Therefore, we agree with the Division that SBC's verifier failed to confirm the identity of the subscriber. Accordingly, we deny SBC's *Petition*.

### III. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361, 1.106 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.106, 1.719, the Petition for Reconsideration filed by Southwestern Bell Telephone Company on June 22, 2005, IS DENIED.

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<sup>18</sup> *Petition* at 2.

<sup>19</sup> *Id.* at 2. On the TPV recording, SBC's verifier said, "Good morning, Mrs. [Complainant's last name]."

<sup>20</sup> *Id.*

<sup>21</sup> See 47 C.F.R. § 64.1120(c)(3)(iii).

<sup>22</sup> 47 C.F.R. § 64.1120(h). This section provides that the term *subscriber* is any one of the following:

(1) The party identified in the account records of a common carrier and responsible for payment of the telephone bill; (2) Any adult person authorized by such party to change telecommunications services or to charge services to the account; or (3) Any person contractually or otherwise lawfully authorized to represent such party.

<sup>23</sup> 47 C.F.R. § 64.1120(c)(3)(iii) provides, in relevant part: "All third party verification methods shall elicit, at a minimum, the identity of the subscriber."

<sup>24</sup> *Petition* at 2.

11. IT IS FURTHER ORDERED that this Order is effective UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief  
Consumer & Governmental Affairs Bureau